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April 2, 2003

By Messenger

Mary L. Cottrell, Secretary
Department of Telecommunications and Energy
One South Station, 2nd Floor
Boston, MA 02110

Re: Docket D.T.E. 01-20 – Opposition to "Motion of Verizon Massachusetts to Strike Unauthorized Pleading of AT&T"

Dear Ms. Cottrell:

On March 31, 2003, AT&T sought leave to submit a short response to key misrepresentations made in Verizon's reply comments concerning its compliance filing, and submitted the short response therewith. Because AT&T was responding to misrepresentations, and conclusory assertions based on no record evidence, that were made for the first time in Verizon's reply comments, AT&T could not have included these points in its initial comments.

Verizon has now moved to strike AT&T's short response. AT&T respectfully urges the Department to deny that unfounded motion to strike. The rebuttal arguments contained in AT&T's short response will assist the Department in its evaluation of Verizon's compliance filing, and in particular in evaluating the unsupported and misleading new claims that Verizon made for the first time in the reply comments that it filed on March 28, 2003. AT&T's submission is timely. It was made less than one business day after Verizon submitted its reply comments, and thus will in no way delay the Department's decision on Verizon's compliance filing.

Verizon asserts that it is never permissible for a party to submit proposed reply comments simultaneous with a request to do so, arguing that no reply comments may ever be offered if they are not contemplated beforehand in a procedural schedule. *See* Vz's Motion to Strike at 2. In fact, however, Department precedent permits a party to seek leave to file reply comments in exactly this manner. Verizon itself has been permitted to do so. *See, e.g., Petition of Global NAPs Inc. against New England Telephone and Telegraph d/b/a Bell Atlantic-Massachusetts Regarding Dark Fiber*, D.T.E. 98-116 (2000). In that instance Verizon had been required to file its initial comments on February 17, 1999, and other parties were directed to file their briefs in response by February 24, 1999. The schedule did not contemplate any further filings. However, one month later, "on March 23, 1999, [Verizon] filed with the Department a Motion for Leave to File Reply … together with a reply brief and two exhibits," which appear to have been two earlier FCC decisions which Verizon failed to find until that time. *Id.* at 2. The Department granted that motion, and considered both the arguments raised by Verizon in its belated reply brief and the accompanying exhibits. *Id.* at 6, 11.

Verizon also cites Department precedent for the proposition that it is improper to thrust extra-record facts upon the Department without leave. *See* Vz's Motion to Strike at 2, citing *Boston Edison Co.*, D.P.U. 92-130-B, at 11 n.10 (1994). The "one cannot un-ring a bell" language quoted by Verizon concerned just such an attempt "thrust[] extra-record facts" upon the Department, in that case by filing a belated affidavit with new evidence. *See* Vz's Motion to Strike at 2, quoting *Boston Gas Co.*, D.P.U. 88-67-II, at 7 (1989).

But this is irrelevant, as AT&T did not include any extra-record facts in its short response. To the contrary, it was Verizon that attempted in its reply comments to rely upon undocumented extra-record facts (thereby confirming that it could not identify any record evidence to support its brand new and indefensible FLC factor). AT&T pointed to record evidence, and to FCC rulings of which the Department may take administrative notice, to demonstrate that key misrepresentations appearing for the first time in Verizon's reply comments were incorrect.

In sum, Verizon tried mislead the Department with unfounded assertions made for the first time in its reply comments concerning its compliance filing. It was proper for AT&T to seek leave to file a short response demonstrating that Verizon's brand-new, extra-record assertions are unfounded. AT&T did so because it believes that its response will be of assistance to the Department. Verizon's motion to strike is without merit, and therefore should be denied.

Very truly yours,

Kenneth W. Salinger

pc: Marcella Hickey, Esq., Hearing Officer
Tina Chin, Esq., Hearing Officer
Michael Isenberg, Director, Telecommunications Division
Service List